Supreme Court, U.S.
FILED
(1)

No. 03 389 SEP 9 2003

OFFICE OF THE CLERK

In The

Supreme Court of the United States

DEBORRAH ELLEN HUDDY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

PAUL GRANT
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Englewood, Colorado 80111
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32 pp

QUESTION PRESENTED

I. Did the trial court err and violate the right of Petitioner to present her defense when the trial court arbitrarily excluded as irrelevant a trial demonstration by the defendant's husband, Craig Huddy, as to how he had repeatedly forged his wife's signature on financial documents, where Craig Huddy would have demonstrated his amazing skills as a master forger, and where the question whether Craig Huddy had forged his wife's signature was material to her claim of innocence.

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I. The court of appeals misread the trial record and failed to apply appropriate constitutional principles of analysis to the trial court's disallowing a powerful presentation of demonstrative evidence. Where the witness' credibility was questionable because of his prior felony convictions and because he was married to the defendant, and where his demonstration of a master forger's skills to the jury would have shown them that he was capable of forging his wife's signature thousands of times, his demonstration was the most powerful evidence the defendant had to offer to corroborate her claim of innocence. The trial court's disallowance of the demonstration deprived Petitioner Huddy of her right to due process and of her right to present her defense at trial	4
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CONSTITUTIONS, STATUTES AND RULES

United States Constitution, Amendment V 1

United States Constitution, Amendment VI 1

OPINIONS BELOW

The Order and Judgment of the Tenth Circuit Court of Appeals affirming the conviction of Petitioner was entered April 16, 2003, and a copy of the unpublished Order and Judgment is attached as Appendix 1.

JURISDICTION

Trial court jurisdiction was invoked pursuant to 18 U.S.C. § 3231. Ms. Huddy filed her timely notice of appeal on February 12, 2002, pursuant to F.R.A.P. 4(b), which appeal was denied on April 16, 2003. The petition for rehearing or for rehearing *en banc* was submitted on May 15, 2003, and this petition was denied on June 9, 2003. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., Amend. V provides:

> No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury . . . nor be deprived of life, liberty, or property without due process of law . . .

U.S. Const., Amend. VI provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously

ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

STATEMENT OF THE CASE

In June 2001, Petitioner Huddy and her husband, Craig Huddy, were named in a 42-count indictment charging wire fraud, mail fraud, and money laundering. Craig Huddy pled guilty and Ms. Huddy proceeded to trial in November 2001. Ms. Huddy was convicted on all 42 counts of the indictment. On February 20, 2002 (signed February 11, 2002, entered February 20, 2002), she was sentenced to 46 months in prison and three years of supervised release and ordered to make payment of $365,145 in restitution and $4100 in special assessments. She filed her timely notice of appeal on February 12, 2002.

The court of appeals denied Ms. Huddy's appeal in its Order and Judgment of April 16, 2003. Appendix 1. The court of appeals denied the timely petition for rehearing or rehearing *en banc* on June 9, 2003. Appendix 3. This petition follows.

Defense counsel asked permission to have key defense witness Craig Huddy demonstrate how he had forged Ms. Huddy's signature to thousands of stolen American Express gift checks. The trial court would not allow the demonstration, ruling that Mr. Huddy's testimony that he forged her signature on documents was relevant, but that his demonstration of that ability was not. When Mr. Huddy testified, the jury was informed for impeachment

purposes that he had prior convictions for forgery and check fraud, and that he had pled guilty to the indictment in this case.

The court of appeals determined that it was within the discretion of the trial court to disallow Mr. Huddy's demonstration of his forgery skills, and found no error. But the court of appeals' reasoning rested on a factual mistake and it contained no analysis or comment on the material significance of the proffered testimony. The court of appeals misread the trial record or misspoke when it wrote that the trial judge had found that a demonstration of Craig Huddy's forgery skills at the time of trial was not relevant to his credibility in describing past events. Slip Opinion at 4. The trial court had actually ruled that the demonstration of Mr. Huddy's forgery skills at the time of trial would be "irrelevant" to what his forgery skills had been at the time of the offense.

REASONS FOR ALLOWING THE WRIT

I. The court of appeals misread the trial record and failed to apply appropriate constitutional principles of analysis to the trial court's disallowing a powerful presentation of demonstrative evidence. Where the witness' credibility was questionable because of his prior felony convictions and because he was married to the defendant, and where his demonstration of a master forger's skills to the jury would have shown them that he was capable of forging his wife's signature thousands of times, his demonstration was the most powerful evidence the defendant had to offer to corroborate her claim of innocence. The trial court's disallowance of the demonstration deprived Petitioner Huddy of her right to due process and of her right to present her defense.

Sometimes, a trial court ruling excluding evidence is so manifestly arbitrary and unreasonable that it interferes with and denies the right of the defendant to present her defense. Where the key question at trial was whether the defendant's husband committed multiple acts of wire fraud, mail fraud, and money laundering acting alone, or whether his wife was involved in his scheme, his ability to carry out this scheme without her involvement clearly depended upon whether he had the ability to forge her signature and have institutions accept his forgeries as authentic.

An essential question for the jury to decide in determining whether Petitioner Huddy had been proven guilty was whether Ms. Huddy's signature on many financial documents had been placed there by her, implicating her in the scheme, or whether her husband had forged her

signature, lending support to her claim and to Mr. Huddy's testimony that she had no involvement with or knowledge of her husband's actions.

Mr. Huddy was a highly skilled forger and a cooperating defense witness who had demonstrated his impressive forger's skills for the prosecutor and the defense attorney before trial. The defense sought to present a demonstration of these skills to the jury, either through an actual demonstration in court – which would have required the use of a knife and scissors – or through an out-of-court preparation of forged documents which documents would then have been presented to the jury. The trial court denied Ms. Huddy the right to present this evidence in either form, and only allowed Mr. Huddy to testify that he had forged her signature repeatedly without her knowledge.

The jury was informed that Mr. Huddy had pled guilty in this case before Ms. Huddy's trial and that he had prior convictions for forgery and for fraud by check. When Mr. Huddy testified at trial that he forged his wife's signature to documents without her knowledge, and that he obtained money from the scheme without her knowledge, misrepresenting to his wife that he had borrowed money from his parents, he testified as a discredited felon and a convicted forger. His credibility was certainly at issue.

An accomplished forger such as Mr. Huddy is an artist whose skills have to be seen to be appreciated. Most jurors have no experience with such things. Testifying that he had those skills and that he had employed them was unconvincing to the jury because all they had to go on was Mr. Huddy's easily discredited testimony. If Mr. Huddy had been allowed to demonstrate his artistry and skill, his

credibility would have been established on that point. Had the jury believed Mr. Huddy on that issue, Ms. Huddy would likely have been acquitted.

If I were to tell my friends that I have climbed Mt. Everest, they wouldn't believe me. On the other hand, if I could produce a picture showing me on the peak in climbing gear, accompanied by a Sherpa guide, even my close friends would be somewhat likely to believe that it was true. At the least, they would give me the benefit of the doubt.

That's all that Ms. Huddy needed: the benefit of the reasonable doubt of the jury. Ms. Huddy's jury would likely have given her that benefit – and a verdict of acquittal – had she been allowed to present the master forgery demonstration of Craig Huddy.

Excluding evidence which may be crucial to the defense violates the fundamental (Fifth Amendment) right to due process and the Sixth Amendment right to compulsory process to summon witnesses on one's behalf. *See Washington v. Texas*, 388 U.S. 14, 22 (1967). The right to present a defense is fundamental:

> The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury *so it may decide where the truth lies*. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.

Id., at 19 (emphasis added).

Ms. Huddy's jury should have been allowed to determine what weight to give to Mr. Huddy's demonstrative testimony: ". . . the truth is more likely to be arrived at by hearing the testimony of all persons of competent understanding who may seem to have knowledge of the facts involved in a case, leaving the credit and weight of such testimony to be determined by the jury. . ." *Rosen* v. *United States*, 245 U.S. 467, 471 (1918).

The right to present relevant evidence is not without limitations. *Rock v. Arkansas*, 483 U.S. 44, 56 (1987) (discussing reasonable, non-arbitrary limitations). But the court may not permit a witness to take the stand and then arbitrarily exclude material portions of that witness's testimony. *See Id.*, at 48. In Ms. Huddy's case, the trial court's ruling was arbitrary and unreasonable – allowing in easily discredited verbal testimony, while excluding much more persuasive and highly material demonstrative evidence. The court arbitrarily excluded the most effective means for presenting Mr. Huddy's testimony. The trial court stated that Mr. Huddy's forgery demonstration would be irrelevant – but also stated that Mr. Huddy's "verbal description [of the forgery technique] would be sufficient". (Tr. Nov. 5, 2001 Motions Hearing at 16). *Sufficient* for whom? The trial judge even offered his opinion that Mr. Huddy's abilities as a forger at trial were irrelevant to his abilities during the time of the offense. (Nov. 15 Motions Hearing at 16).

Ms. Huddy submits that the skills of a master forger are not so easily acquired as the trial judge imagined. More importantly, *the judge improperly weighed this crucial evidence*, and excluded it from the jury's consideration, thus *usurping the jury's role* as the finder of fact and denying Ms. Huddy her most effective defense. The judge's ruling that Mr. Huddy's testimonial evidence was relevant,

but the demonstrative evidence was not, was arbitrary and unreasonable.

Ms. Huddy was severely prejudiced by the exclusion of Mr. Huddy's forgery demonstration. Mr. Huddy's verbal description of the forgery and assertion of his exclusive responsibility for the criminal acts was disbelieved by the jury and by the judge. In fact, the trial court later made an express finding that Mr. Huddy had committed perjury in his trial testimony: "I don't have any trouble finding that Craig Huddy committed perjury, at least in part. . . . And I so find." (Feb. 6, 2002, Tr. at 13).

Denial of the fundamental trial right to present a defense was reversible error. "An error in admitting plainly relevant evidence which possibly influenced the jury adversely to a litigant cannot . . . be conceived of as harmless." *Chapman v. California*, 386 U.S. 18, 24 (1967). An unconstitutional conviction resulted.

CONCLUSION

An innocent mother of two is serving time in prison most likely because of an arbitrary evidentiary ruling. The writ should be allowed.

Dated this 8th day of September, 2003.

Respectfully submitted,

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Counsel for Petitioner

APPENDIX

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1. Order and Judgment of the Tenth Circuit Court of Appeals entered on April 16, 2003.... App. 1
2. Judgment of the District Court entered on February 20, 2002..... App. 8
3. June 9, 2003, Order denying Petition for Rehearing ..... App. 18

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DEBORAH ELLEN HUDDY,

Defendant-Appellant.

No. 02-1060
(D.C. No. 01-CR-215-M)
(D. Colorado)

ORDER AND JUDGMENT*

(Filed Apr. 16, 2003)

Before **EBEL**, **HENRY**, and **MURPHY**, Circuit Judges

After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Appellant Deborah Ellen Huddy was convicted of multiple counts of wire fraud, mail fraud, and money laundering following a jury trial. Mrs. Huddy and her husband, Craig Huddy, had obtained numerous gift checks from American Express by submitting fraudulent orders that appeared to be authorized by Mrs. Huddy's former employer, U.S. West. They deposited these checks in a variety of their own bank accounts, as well as an account owned by Robert Baier, a friend and former employer of Mrs. Huddy. Mr. Huddy testified extensively on Mrs. Huddy's behalf at trial, asserting that he had forged her signature on all but the first four fraudulent gift check orders. Mr. Huddy maintained that Mrs. Huddy was unaware of the scheme.

Nonetheless, the jury concluded she was guilty. Mrs. Huddy was sentenced to forty-six months' imprisonment and ordered to pay $365,145 – the total amount lost by American Express – in restitution. Mr. Huddy, who pled guilty, was also ordered to pay $365,145 in restitution. Mrs. Huddy now appeals both her conviction and the restitution order. She raises six arguments, which we address in turn.

Admission of Rule 404(b) Evidence

First, Mrs. Huddy argues that the district court erred in admitting prior bad acts evidence under Federal Rule of Evidence 404(b). We review the district court's decision on Rule 404(b) evidence for abuse of discretion. *See United States v. Wilson*, 107 F.3d 774, 782 (10th Cir. 1997).

Among other factors, to be admissible under Rule 404(b), evidence of prior bad acts by a defendant must be

relevant for some other reason than showing the defendant's propensity to commit a crime – such as motive, opportunity, or knowledge. *See Huddleston v. United States*, 485 U.S. 681, 685086 (1988). Further, such evidence is relevant only if a jury could reasonably conclude that the acts occurred and that the defendant committed them. *See id.* at 689. Mrs. Huddy argues that these factors were not met in this case.

Here, the Rule 404(b) evidence was a fraudulent student loan application by Mrs. Huddy using the forged signature of Mr. Baier. In requesting that this evidence be admitted, the government stressed that Mr. Baier had been used by the Huddys both in the student loan fraud and in the fraud charged in this case. It was on this basis that the district court found the 404(b) evidence relevant. Prior bad acts evidence may be used to establish identity through a consistent method of committing a crime. *See United States v. Porter*, 881 F.2d 878, 886 (10th Cir. 1989). We conclude that the evidence was relevant to show Mrs. Huddy's modus operandi in her fraudulent schemes.

We further conclude that the jury could have reasonably found that Mrs. Huddy committed the prior bad act. While Mr. Huddy testified that Mrs. Huddy was unaware of the student loan fraud, he did concede that Mrs. Huddy herself had signed the fraudulent application. The jury could have reasonably concluded that Mrs. Huddy bore responsibility for the deception.

Evidence is admissible under 404(b) only if its probative value is not substantially outweighed by unfair prejudice. *See Wilson v. Muckala*, 303 F.3d 1207, 1217 (10th Cir. 2002). Mrs. Huddy has not shown that any

unfair prejudice arising from the Rule 404(b) evidence substantially outweighed its probative value.

Exclusion of Reenactment of Forgery by Mr. Huddy

Mrs. Huddy further argues that it was error for the district court to exclude a forgery demonstration by her husband. We also review this decision for abuse of discretion. *United States v. Johnson*, 971 F.2d 562, 571 (10th Cir. 1992).[1] We conclude that the district court did not abuse its discretion in determining that a demonstration of Mr. Huddy's forgery skills at the time of the trial was not relevant to his credibility in describing past events. *See* R. Supp. Vol. 1, at 16.

Reliability of the American Express Records

Mrs. Huddy argues that it was error to admit certain American Express records (showing that a woman identifying herself as Deborah Huddy had contacted American Express regarding the gift check orders) because they were unreliable. To be admissible, business records must be trustworthy. *See* Fed. R. Evid. 803(6); *Timberlake Constr. Co. v. U.S. Fidelity & Guar. Co.*, 71 F.3d 335, 341 (10th Cir. 1995). This evidentiary ruling also falls under the

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[1] Mrs. Huddy argues that this issue should be reviewed de novo, as a violation of the accused's due process right to present her theory of the defense. However, while the right of a defendant to call witnesses on her own behalf is fundamental, the right to choose the manner of that testimony is not. *See United States v. Adams*, 271 F.3d 1236, 1243 (10th Cir. 2001), *cert. denied*, 535 U.S. 978 (2002).

abuse-of-discretion standard of review. *Johnson*, 971 F.2d at 571.

As the district court determined, testimony at trial established that the only inaccuracies in the records were confined to incorrect identification of the American Express employee entering the information; there was no indication of other problems with the records suggesting lack of trustworthiness. Accordingly, the district court did not abuse its discretion in admitting the evidence.

The District Court's Treatment of the Jury's Question

Mrs. Huddy argues that the district court erred in deciding not to respond to a juror's question (submitted before the close of evidence and before deliberations had begun) without first consulting with the attorneys while Mrs. Huddy was present. We review this issue for plain error because Mrs. Huddy did not object when the district court announced its decision regarding the juror question. Fed. R. Crim. P. 52(b); *United States v. McDonald*, 933 F.2d 1519, 1524 (10th Cir. 1991).

We have held that, if a jury submits a question to the court, and if the question is answered, it "must be answered in open court and only after providing counsel an opportunity to be heard." *United States v. Carter*, 973 F.2d 1509, 1515 (10th Cir. 1992). Here, however, the court did not respond to the question and had no contact with the jury. We find no error in the district court's conduct.

The Restitution Order

Mrs. Huddy additionally argues that the district court erred in its restitution order. Mr. and Mrs. Huddy were sentenced by separate judges, and each judge ordered each defendant to pay the full amount of the victim's loss in this case. There was no objection to the restitution order at the time it was imposed; therefore our review is for plain error. Fed. R. Crim. P. 52(b). An illegal restitution order constitutes plain error. *United States v. Herndon*, 982 F.2d 1411, 1421 (10th Cir. 1992).

Our precedents interpreting the Victim and Witness Protection Act, 18 U.S.C. § 3663, prohibit a victim from collecting restitution beyond the amount of the victim's actual loss. *See United States v. Gottlieb*, 140 F.3d 865, 873 (10th Cir. 1998). We therefore vacate Mrs. Huddy's restitution order and remand to the district court for the limited purpose of clarifying that Mrs. Huddy's liability is joint and several with that of her husband.[2]

Cumulative Error

Mrs. Huddy argues that her conviction should be reversed due to cumulative error. Cumulative error analysis does not apply where there were no errors at

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[2] The provisions of the Mandatory Victim's Restitution Act, 18 U.S.C. §§ 3663A, 3664, do not conflict with the requirement of joint and several liability in such cases. *See United States v. Scott*, 270 F.3d 30, 52-53 (1st Cir. 2001) (examining legislative history of § 3664(h) and concluding that where multiple defendants are made liable for entire amount of victim's loss, restitution order must be interpreted to impose joint and several liability), *cert. denied*, 535 U.S. 1007 (2002).

trial. *See United States v. Rivera*, 900 f.2d 1462, 1470 (10th Cir. 1990) (en banc). Because Mrs. Huddy has only demonstrated error with respect to a sentencing issue, cumulative error analysis does not apply.

The restitution order is VACATED and REMANDED for clarification in accordance with the principles described above. In all other respects, the judgment of the district court is AFFIRMED.

Entered for the Court

Robert H. Henry
Circuit Judge

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO
(Filed Feb. 20, 2002)

UNITED STATES OF AMERICA,

v.

DEBORRAH ELLEN HUDDY

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

CASE NUMBER: 01-CR-215-01-M DEP. CLK

Michael D. Ferber, Retained (Defendant's Attorney)

Thomas M. O'Rourke (Assistant United States Attorney)

THE DEFENDANT: Was found guilty on Counts 1 through 41 of the Indictment after a plea of not guilty. The forfeiture allegation in Count 42 was also found to apply.

ACCORDINGLY, the Court has adjudicated that the defendant is guilty of the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Numbers
18 U.S.C. §§ 1343 and 2	Wire Fraud, Aiding and Abetting	12/31/99	1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35 and 37

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of

any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

Defendant's Soc. Sec. No.:
521-06-1298

Defendant's Date of Birth:
01/28/60

Defendant's USM No.:
23644-013

Defendant's Residence Address:
9933 South Heywood Street
Highlands Ranch, Colorado
80130

Defendant's Mailing Address:
Same

February 6, 2002
Date of Imposition
of Judgment

/s/ Clarence A. Brimmer
Signature of
Judicial Officer

Clarence A. Brimmer,
Senior U. S. District Judge
Name & Title of
Judicial Officer

2-11-02
Date

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Date Offense Concluded	Count Numbers
18 U.S.C. §§ 1341 and 2	Mail Fraud, Aiding and Abetting	10/20/99	2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, and 38
18 U.S.C. §§ 1957(a) and 2	Engaging in Monetary Transactions in Criminally Derived Property, Aiding and Abetting	08/12/99	39, 40 and 41
18 U.S.C. § 982(a)(1)	Forfeiture Allegation		42

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 46 months on each count, to run concurrently.

The Court makes the following recommendation to the Bureau of Prisons:

Designation to the Federal Prison Camp – Alderson –West Virginia.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before noon on June 17, 2002.

RETURN

I have executed this judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____

UNITED STATES MARSHAL

By _____

Deputy United States Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years on each count, all to run concurrently.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons. The defendant shall not commit another federal, state or local crime and shall not illegally possess a controlled substance.

The drug testing condition required by 18 U.S.C. § 3583(d) is suspended based on the Court's determination that the defendant poses a low risk of future substance abuse.

The defendant shall not possess a firearm as defined in 18 U.S.C. § 921.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Monetary Obligations sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this Court (set forth below). The defendant shall also comply with the additional conditions on the following page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the Court or probation officer;

2) the defendant shall report to the probation officer as directed by the Court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change of residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to any controlled substance, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit the defendant at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

14) the defendant shall provide the probation officer with access to any requested financial information.

ADDITIONAL CONDITIONS OF SUPERVISION

1) The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the installment payment schedule.

MONETARY OBLIGATIONS

The defendant shall pay the following monetary obligations in accordance with the schedule of payments set forth below.

Count	Assessment	Fine	Restitution
1 thru 41	$4,100.00	$0.00	$522,145.00
TOTALS	$4,100.00	$0.00	$522,145.00

The defendant shall make restitution to the following payees in the amounts listed below. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid in full prior to the United States receiving payment.

Name of Payee	*Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment
American Express Travel Related Services 4315 South 2700 West Salt Lake City, Utah 84184-3400	$365,145.00	$365,145.00	
Robert Baler (address in Probation Dept. files)	$157,000.00	$157,000.00	
TOTALS	$522,145.00	$522,145.00	

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

The Court has determined that the defendant does not have the ability to pay interest and it is ordered that the interest requirement is waived for the restitution.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total monetary obligations shall be due as follows:

The special assessment is due in full immediately.

Any unpaid balance of restitution shall be paid in equal monthly installments of at least $100 during the term of supervised release.

Unless the Court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of monetary obligations shall be due during the period of imprisonment. All monetary obligation payments, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court, unless otherwise directed by the Court, the probation officer, or the United States Attorney.

The defendant shall receive credit for all payments previously made toward any monetary obligations imposed.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Payments are to be made payable to the Clerk, United States District Court, District of Colorado, 1929 Stout Street, Room C-145, Denver, Colorado 80294 for disbursement.

STATEMENT OF REASONS

The Court adopts the factual findings and guideline application in the presentence report except:

The adjustment for Obstruction of Justice, pursuant to U.S.S.G. § 3C1.1, does not apply.

Guideline Range Determined by the Court: (combined)

Total Offense Level: 22

Criminal History Category: II

Imprisonment Range: 46 to 57 months on each count

Supervised Release Range: 2 to 3 years on each count

Fine Range: $75,000 (combined)

The fine is waived or below the guideline range because of inability to pay.

Total Amount of Restitution: $522,145.00

The sentence is within the guideline range, that range does not exceed 24 months, and the Court finds no reason to depart from the sentence called for by the application of the guidelines.

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Case No. 01-CR-215-01-M February 20, 2002

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UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v. No. 02-1060

DEBORAH ELLEN HUDDY,

Defendant-Appellant.

ORDER

Filed June 9, 2003

Before **EBEL**, **HENRY**, and **MURPHY**, Circuit Judges

Appellant's request for leave to submit introductory statement required by F.R.A.P. 35(b)(1) as a supplement to the petition for rehearing and the petition for rehearing en banc is granted.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular

active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court
PATRICK FISHER,
Clerk of Court

by: /s/ Karen Phillips
Deputy Clerk